

MORGANTOWN PLANNING COMMISSION

MINUTES

6:30 PM

July 12, 2012

COUNCIL CHAMBERS

MEMBERS PRESENT: Peter DeMasters, Sam Loretta, Bill Petros, Jennifer Selin, Mike Shuman, Tim Stranko, William Wyant

MEMBERS ABSENT: Ken Martis, Carol Pyles

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER/ROLL CALL: DeMasters called the meeting to order at 6:30 PM.

II. GENERAL PUBLIC COMMENTS: None

III. MATTERS OF BUSINESS:

- A. Approval of the June 14, 2012 minutes. Stranko moved to approve the minutes from the June 14, 2012 hearing as presented; seconded by Wyant. Motion carried unanimously.

IV. OLD BUSINESS: None.

V. NEW BUSINESS:

- A. **RZ12-02 / Rice Rentals / 502 Stewart Street:** Request by John Rice, on behalf of Rice Rentals, Inc., for a Zoning Map Amendment from R-2, Single- and Two-Family Dwelling District to B-1, Neighborhood Business District for property at 502 Stewart Street; Tax Map 14, Parcels 450 and 451; R-2, Single- and Two-Family Residential District.

Fletcher read the Staff report, stating that the petitioner seeks to reclassify Parcels 450 and 451 of Tax Map 14 from R-2, Two-Family Residential District to B-1, Neighborhood Business District. Addendum A of this report illustrates the location of the subject realty.

ANALYSIS:

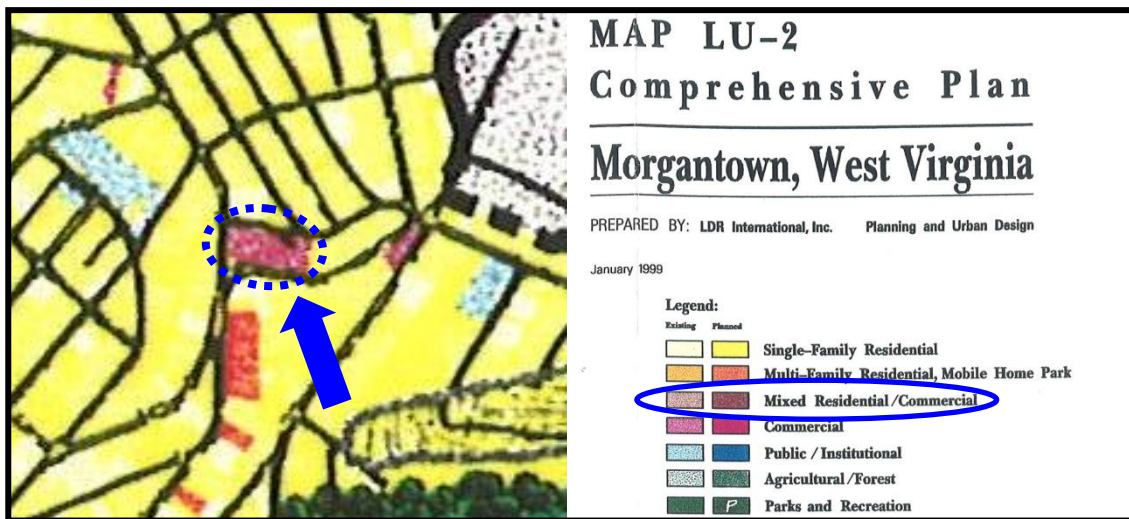
According to the Finance Department, the subject property has a long history of mixed commercial and residential uses and has been occupied as a restaurant and neighborhood convenience store for the past fifteen to twenty years. Some of the names of these establishments include *Anthony's Pizza*, *Mountaineer Pizza*, *Colasante's Carryout*, *Market Place*, and *Express Mart*. Additionally, there is a one registered overstore dwelling unit on the second floor.

Because the B-1 Neighborhood Business District does not currently exist within the immediate vicinity of the petitioner's property, the proposed zoning map amendment is not considered a zoning district boundary adjustment.

According to Article 1345.01 of the Planning and Zoning Code, the purpose of the B-1, Neighborhood Business District is to:

“Provide areas for convenient business uses, which tend to meet the daily shopping and service needs of residents of an immediate neighborhood, and which contain pedestrian-oriented, human-scaled construction that is designed to be compatible with the surrounding neighborhood character. Because of the proximity to residential neighborhoods, high quality design is essential in order to preserve the integrity of those neighborhoods.”

The following figure is a portion of Map LU-2 of the 1999 Comprehensive Plan and illustrates that the planned use for the subject property was “Mixed Residential/Commercial.”



A Planners Dictionary provides the following definition for “spot zoning” (Planning Advisory Service Report Number 521/522; by the American Planning Association; April 2004; page 384):

“An arbitrary zoning or rezoning of a small tract of land, usually surrounded by other uses or zoning categories that are of a markedly or substantially different intensity, that is not consistent with the comprehensive land use plan, and that primarily promotes the private interest of the owner rather than the general welfare.”

West Virginia State Code §8A-7-8 provides that if a zoning amendment is inconsistent with the adopted Comprehensive Plan, then City Council, with the advice of the Planning Commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and that those changes have substantially altered the basic characteristics of the area.

It is the opinion of the Planning Division that the petitioner's proposed zoning map amendment should not be considered spot zoning and appears to be consistent with the adopted Comprehensive Plan based on the following points:

1. The 1999 Comprehensive Plan recommended land uses (see Map LU-2) for the subject realty was mixed residential/commercial.

2. Staff has no working knowledge as to why the zoning classification for the subject realty has remained R-2. However, the major zoning ordinance amendment of 2006 significantly modified the legislative intent, permitted land uses, and desired development density and scope of the B-1 District resulting in a business district that better reflects the character of Morgantown's neighborhoods and its neighborhood commercial experience.
3. The structure on the subject property appears to have been constructed for the purpose of commercial occupancy. According to the petitioner, the original portion of the structure was built in the 1930s and served as a gas station for many years; and, an addition was constructed to the building in the 1960s and that portion of the building served as a neighborhood grocery and meat deli.
4. The structure on the subject property appears to have been occupied by a convenience store and fast-food or family restaurant serving the shopping and service needs of the immediate neighborhood for at least the past 15 to 20 years.
5. The existing commercial uses occupying the structure are permitted by-right in the B-1 District but only by conditional use approval in the R-2 District.
6. Mixed-use and overstore dwelling types are not permitted in the R-2 District but are permitted by-right in the B-1 District. Therefore, the existing apartment on the second story of the existing structure is considered a nonconforming use within the current R-2 District classification.

Zoning map amendment requests should be evaluated on their land-use merits alone. The petitioner's development intentions are extraneous and the Commission should consider the request on its merits as a land-use decision. In conducting such an analysis, the Commission should determine if the B-1, Neighborhood Business District is the appropriate zoning classification for the subject realty, weighing all possible future development and land use scenarios as permitted by the Planning and Zoning Code; particularly, Article 1345 "B-1, Neighborhood Business District" and Table 1331.05.01 "Permitted Land Uses".

DeMasters recognized the petitioner, John Rice, who stated that he is asking for the property to be rezoned, as it is already being used for commercial business. He further stated that he also owns rental property in the same area, and he does care about the neighborhood.

There being no questions by the Planning Commission, DeMasters opened the public hearing portion, asking if anyone was present to speak in favor of or in opposition to the request.

Richard Dumas, 444 Overhill Street, stated that while he realizes the property has been used for commercial purposes for quite awhile, he is opposed to the rezoning because R-2 zoning was designed to protect the R-1 neighborhoods. He offered that, if everything Mr. Rice wants to do can be accomplished by a Conditional Use, he would like to see it be accomplished that way rather than by rezoning.

Jinny Simmons, 127 Willowdale Road, stated that she is opposed to the rezoning for the same reason she would be opposed to killing an endangered species. There are far too few residential areas, and once it is rezoned, it will likely never go back to residential.

Ray Hicks, 107 Ridgeley Road, stated that there is a rental unit nearby, and he is concerned about lack of parking and congestion.

There being no further comments, DeMasters recognized Rice for a rebuttal. Rice stated that he is not concerned about parking, as he has space to allow for more parking, if needed. He said that people are requesting seating in the pizza shop so that they can eat in rather than just carry out.

There being no further comments, DeMasters declared the public hearing closed and asked for the Staff recommendation.

Fletcher stated that the Planning Division advises the Planning Commission to determine that:

- The subject property appears to have been developed and used for many years by neighborhood-scaled commercial establishments serving the shopping and service needs of residents within the immediate neighborhood.
- The proposed zoning map amendment appears to be consistent with the 1999 Comprehensive Plan's recommended mixed residential/commercial planned land uses; the purpose for which appears to recognize the site's past, present, and continued function.
- The proposed zoning map amendment should not be considered an enactment of spot zoning as it does not appear to arbitrarily nor solely benefit the private interest of the owner. The proposed reclassification appears to correspondingly promote the interest and convenience of the immediate vicinity by recognizing the B-1 District as more appropriate given the property's historical function and service as a neighborhood-scaled commercial site.

Therefore, the Planning Division advises the Planning Commission to forward a recommendation to City Council to approve the requested zoning map amendment so that Parcels 450 and 451 of Tax Map 14 are reclassified from R-2, Single- and Two-Family Residential District to B-1, Neighborhood Business District.

Petros asked for clarification on how the Comprehensive Plan addresses rezoning to Business Districts and mentioned that each neighborhood could be served by a small B-1 area.

Fletcher stated that the changes to the zoning ordinance in 2006 did address the fact that there were too many similar B-1 Districts and that the B-1 Districts needed to be scaled back to reflect more of neighborhood scale and less of areas such as VanVoorhis, Patteson Drive, Earl Core Rd., etc. He stated that the closest small scale commercial area would most likely be at the intersection of University Avenue and Stewart Street or Chestnut Ridge Road.

Selin stated that she feels it is useful to have small business areas that serve a certain amount of pedestrian traffic and close-to-home store runs. She seems to remember in the past that the Commission has been in agreement that it would be good to have this type of small business within the neighborhoods.

Stranko added that he feels the wishes of the neighborhood should be respected.

Petros inquired about uses within the R-2 that allow for Conditional Uses. Fletcher stated that there are such uses. He read from the land use table the uses that are allowable from a non-residential standpoint in R-2 and B-1 zoning districts.

Loretta asked if a mixed use was by right or condition. Fletcher stated that a mixed use or over store dwelling is not permitted in the R-2. In B-1, both are permitted by right.

Selin asked about if a restaurant was by right. Fletcher clarified that, under R-2, a family restaurant is permitted by Conditional Use. In B-1, a restaurant or private club is permitted by conditional use.

Petros stated that he is concerned that if the property is rezoned, a tavern or private club could be put in on the property.

Loretta said this is an opportunity to change the non-conforming property to conforming, if rezoned to B-1.

Stranko said that, although he shares some of the same concerns, he is in support of the rezoning. He feels the Commission needs to start paying attention to small businesses in neighborhoods that would prevent the need to drive a distance to buy a loaf of bread, for example, and would help promote a more walkable community.

Selin asked Fletcher if he is aware of any parking issues. Fletcher said he has not observed any parking congestion, but he has not done any parking calculations to date. He stated that parking would be looked at more closely if there is a zoning change.

Shuman asked what type of hurdles would be faced if the zoning was left as is, with expanded business. Fletcher answered that when he receives more detailed plans of how the petitioner wishes to expand the business, he can then take a closer look at parking. The dwelling unit is grandfathered, so it can continue to operate. If he wanted to put in more units, that would be a hurdle. The difference is that there is a more limited spectrum of commercial enterprises that could occupy that building currently, but that spectrum would increase if the zoning was changed to B-1.

Selin asked if changing the parcel to B-1 zoning would cause other nearby property owners to seek the same change. Fletcher stated that he believes the average number of parcels comprising a B-1 Districting within a neighborhood is approximately one to three parcels.

Stranko stated that he believed what Selin was trying to say is that B-1 parcels within neighborhoods should be there primarily to serve the needs of the neighborhood.

Wyant asked if any of the area zoned R-2 is currently operating under a conditional use. Fletcher said he did not go back to see if conditional uses had been granted in relation to the petitioner's property.

Wyant asked if the pizza shop, which is now carry-out only, adds seating for purposes of eating in, would that require an application for conditional use? He also asked Fletcher if he felt it was improperly zoned, as is. Fletcher stated he did not think so, as it would fall under "Family Restaurant", which can be 3,000 square feet or less. As for zoning, Fletcher stated he feels it would be more appropriately zoned as a B-1 District.

Stranko made a motion, as recommended by Staff, to forward a recommendation to City Council to approve the requested zoning map amendment so that Parcels 450 and 451 of Tax Map 14 are reclassified from the R-2 District to the B-1 District; seconded by Loretta. Motion carried unanimously.

- B. MNS12-11 / Scott Properties, LLC / Old Golden Blue Lane:** Request by William Ernstes of Triad Engineering, Inc., on behalf of Scott Properties, LLC, for minor subdivision approval of property located along Old Golden Blue Lane, Lorentz Avenue, Jones Avenue, and First Street; Tax Map 20, Parcels 258, 259, 260, 261, 262, 263, 257, 257.1, 266, 268.1, 267, and, 268; R-2, Single- and Two-Family Residential District.

Fletcher read the Staff report, stating that the petitioner seeks to re-subdivide twelve (12) existing parcels into four (4) parcels. Addendum A of this report illustrates the location of the subject property.

The petitioner's proposed subdivision details include:

- Proposed "Tract One" will contain approximately 11,431 square feet in area and have approximately 147.5 feet of frontage on Lorentz Avenue.
- Proposed "Tract Two" will contain approximately 9,754 square feet in area and have approximately 85.17 feet of frontage on Lorentz Avenue.
- Proposed "Tract Three" will contain approximately 12,860 square feet in area and have approximately 148.48 feet of frontage on Old Golden Blue Lane.
- Proposed "Tract Four" will contain approximately 26,718 square feet in area and have approximately 223.94 feet of frontage on Old Golden Blue Lane.

The proposed parcels exceed the R-2 District minimum lot size standard of 5,000 square feet and minimum lot frontage standard of 40 feet and not setback encroachments will be created by the proposed subdivision.

The petitioner obtained variance relief from the Board of Zoning Appeals on May 16, 2012 so that Old Golden Blue Lane (private street) may serve as the frontage and lot front rather than Jones Avenue (public street) for proposed Tracts "Three" and "Four" (Case No. V12-12).

Fletcher introduced the petitioner's representative, Greg Matheny, who stated that, by majority vote 2 years ago, the use of the property would be R-2. Since that time, he has moved forward on building townhomes. What this minor subdivision will allow is continuing development in a comparable fashion.

There being no questions by the Commission, DeMasters opened the public hearing portion of the meeting asking if anyone was present to speak in favor of or in opposition to the request. There being none, DeMasters declared the public hearing portion closed and asked for the Staff recommendation.

Fletcher read stated that Staff recommends approval with the following conditions:

1. That the petitioner submit three (3) original final plat documents signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature;

2. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the conditions set forth above.

Selin asked Fletcher if he had any concerns about using Old Golden Blue Lane for frontage. Fletcher stated he had no concern, as they have already obtained Variance relief from the Board of Zoning Appeals to use Old Golden Blue Lane for frontage.

Wyant stated a concern about impact on surrounding streets. With Lorentz being above the property, he is concerned that the stability of the street could be compromised. He also expressed concern about bringing the road down to Stewart St., it creates yet another intersection. He asked if Public Works would be asked to review these things.

Fletcher stated that the roadway network has already been reviewed and approved by Public Works. Old Golden Blue Lane will not extend all the way to Stewart, but rather to First Street and then to intersection. Overhill Street has been opened to serve as another means of exiting the property. As far as damage to Lorentz, there has already been some damage incurred, but the developer is working with the City to correct that. Fletcher stated that he understands the City Engineer has required a bond to protect the roads so that money is available to repair damage. The reason for the frontage on Old Golden Blue Lane is due to the slope and so that parking can be accommodated. The manner in which the townhomes have been built has served to help stabilize the hillside. Staff is also working with the developer to try and preserve First Street as a pedestrian connection from the Wiles Hill neighborhood to campus, which is heavily used. Staff has made a recommendation to the Traffic Commission to close First Street from vehicular traffic. He reminded the Commission that this request is only for a minor subdivision.

Stranko made a motion to approve with Staff recommended conditions; seconded by Selin. Motion carried unanimously.

VI. OTHER BUSINESS:

A. Committee Reports

- Traffic Commission: Wyant stated that the Traffic Commission did not meet for the month of July due to the regular schedule date falling on July 4th.
- Green Team: Stranko stated that he had no report.

B. Staff Comments: None.

VII. FOR THE GOOD OF THE COMMISSION – None.

VIII. ADJOURNMENT: 7:30 PM

MINUTES APPROVED:

August 23, 2012

COMMISSION SECRETARY:


Christopher M. Fletcher, AICP